



## **II. TIMELINESS OF NOTICE OF REMOVAL**

3. This Notice is timely under 28 U.S.C. § 1446(b). It is filed within 30 days after service of citation and Plaintiffs' Original Petition on Liberty Mutual. Plaintiffs' Original State Court Petition naming Defendant was filed on November 30, 2018. Defendant Liberty Mutual was served on January 9, 2019.

4. An Index of all documents filed in the State Court Action are attached hereto as Exhibit "A," as required by 28 U.S.C. §1446(a). Further, a list of all counsel of record, including addresses, telephone numbers, and parties represented is attached as Exhibit "B."

## **III. NATURE OF PLAINTIFF'S CASE AGAINST DEFENDANT**

5. This suit involves an automobile accident that occurred in Hays County, Texas (the "Claim"). Liberty Mutual is the insurer for Plaintiffs.

6. Plaintiffs' now sue Defendant for breach of contract and violations of the Texas Insurance Code.

## **IV. JURISDICTIONAL BASIS FOR REMOVAL: DIVERSITY**

7. Pursuant to 28 U.S.C. §1332(a)(1), this Court has diversity jurisdiction.

8. Plaintiffs are residents of El Paso County, Texas as alleged in her Original Petition.<sup>2</sup>

9. Liberty Mutual was, at the time this action commenced, and still is, a citizen of Massachusetts. Therefore, complete diversity exists between Plaintiffs and Defendants.

10. Moreover, the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00. *See* 28 U.S.C. §1332(a)(1). Pursuant to 28 U.S.C. § 1446(c)(2), the amount demanded

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appear waive its right to removal, Liberty Mutual filed this Notice of Removal with relevant documents in the Northern District of Texas as well as the Western District of Texas, where Hays County is located.

<sup>2</sup> *Plaintiffs' Original Petition*, attached hereto as Exhibit A-2.

by Plaintiffs' in their Original Petition is deemed to reach the amount in controversy for purposes of this Notice.

11. Because Texas law allows recovery for attorneys' fees and penalties when an insurer fails to comply with the Texas Insurance Code, this Court must consider such fees and penalties as it assesses the amount in controversy. *See Zapata v. Allstate Indem. Co.*, No. DR-07-CV-063, 2008 WL 11416943, at \*5 (W.D. Tex. Apr. 15, 2008)(citing *Hartford Ins. Group v. Lou-Con Inc.*, 293 F.3d 908, 911–12 (5th Cir.2002).

12. Plaintiffs' Original Petition states, "Plaintiffs seeks to recover over \$200,000.00 but not more than \$1,000,000.00."<sup>3</sup> Further, Plaintiffs illustrate that the damages will exceed the jurisdictional limit by seeking actual damages to "recover the amount of Plaintiffs' claims, injuries, damages, 18 percent per annum of the amount of such claim as damages, and reasonable attorney's fees, under Chapters 541 and 542, Texas Insurance Code, and Chapter 38, Texas Civil Practice and Remedies Code, as may be determined by the Jury which are amounts within the jurisdictional limits of this court."<sup>4</sup> Finally, Plaintiffs seek pre- and post -judgment interest, reasonable attorney's fees, and costs of court. All of these damages are considered when determining the jurisdictional limit. These amounts sought necessarily put Plaintiffs over the \$75,000 amount in controversy requirement.

13. Because complete diversity exists between the parties and the amount in controversy is more than the jurisdictional minimum of \$75,000, removal is proper.

#### **V. NOTICE SHALL BE PROVIDED**

14. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly give written notice of the filing of this Notice of Removal to Plaintiffs and will further file a copy of this Notice of Removal

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<sup>3</sup> Exhibit A-2 at p. 7.

<sup>4</sup> *Id.* at p. 7.

with the District Clerk of Dallas County, Texas, where the State Court Action was previously pending.

## **VI. CONCLUSION**

WHEREFORE, Defendant hereby request removal of the case styled *Cameron Barragan and Diamond Price, Individually and as Next of Friend of Cameron Barragan, a minor v. Liberty County Mutual Insurance Company*, Cause No. DC-18-18061, and respectfully requests that this Court assume full jurisdiction of this proceeding for all purposes as if originally filed in this Court, including but not limited to issuing any orders necessary to stay proceedings in the State Court Action, and for all other relief to which Defendants may be justly entitled.

Respectfully submitted,

**STEWART LAW GROUP PLLC**

/s/ Amy M. Stewart

**Amy M. Stewart**

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**ATTORNEY FOR DEFENDANT**

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of February 2019, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court and also served counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Amy M. Stewart

Amy M. Stewart